

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED

OCT 23 2018

Clerk, U.S. District Court
District Of Montana
Missoula

STACY G. HALL,

Petitioner,

vs.

REGINALD MICHAEL,

Respondent.

CV 18-84-H-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston issued his Findings and Recommendation in this case on August 15, 2018, recommending that the Court dismiss Hall's Petition for Writ of Habeas Corpus, brought pursuant to 28 U.S.C. § 2254. (Doc. 5.) Hall timely filed objections to the Findings and Recommendation. (Doc. 6.) Consequently, Hall is entitled to de novo review of those findings and recommendations to which he has specifically objected. 28 U.S.C. § 636(b)(1)(C). Absent objection, this Court reviews findings and recommendations for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake

has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Reviewing de novo, the Court concludes that it lacks jurisdiction to hear the merits of Hall’s petition. The current petition marks Hall’s third petition arising from the same term of incarceration. *See Hall v. Law*, No. CV 11–07–GF–SEH; *Hall v. Kirkegard*, No. CV 12–18–H–DLC. Hall challenges the state’s calculation of his sentence, and he could have raised this argument in his first habeas petition. 28 U.S.C. § 2244(b)(2); *Magwood v. Patterson*, 561 U.S. 320, 332–33 (2010). What is more, even if the current petition were excused from the general rule barring second or successive petitions, this Court would lack jurisdiction absent order from the Ninth Circuit Court of Appeals. 28 U.S.C. § 2244(b)(3).

The Court also determines that Hall is not entitled to a certificate of appealability. There is no reasonable debate regarding the Court’s jurisdiction over Hall’s second or successive petition. *See Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Reviewing the remaining portions of Judge Lynch’s Findings and Recommendations for clear error and finding none,

IT IS ORDERED:

(1) Judge Lynch’s Findings and Recommendation (Doc. 5) are ADOPTED;

- (2) Hall's Petition (Doc. 1) is DISMISSED for lack of jurisdiction;
- (3) A certificate of appealability is DENIED; and
- (4) The Clerk of Court shall enter judgment of dismissal by separate document.

DATED this 23rd day of October, 2018.



Dana L. Christensen, Chief Judge
United States District Court